SPEECH

OF

HON. J. R. TYSON, OF PENNSYLVANIA,

ON THE

RESOLUTIONS REPORTED FROM THE COMMITTEE

ON THE ALLEGED

ASSAULT BY MR. BROOKS ON SENATOR SUMNER.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, JULY 12, 1856.

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THE SUMNER ASSAULT.

The House having under consideration the report of the committee on the alleged assault of Hon. PRESTON S. BROOKS on Hon. CHARLES SUMNER, of the Senate; and resolutions to expel and censure—

Mr. TYSON said:

Mr. SPEAKER: From the moment these resolutions came before the House, now nearly a week ago, I have endeavored, at every opportunity, to attract the eye and ear of the Speaker, for the purpose of submitting my views on the constitutional question which they involve. But it has so happened that all my efforts have been ineffectual until the present time, when, in order to bring the debate to a close, we are under the operation of a rule which forbids any extended discussion. It was my intention to attempt to show, what is so confidently denied by the minority report, that the jurisdiction of the House of Representatives over misdemeanors committed out of its presence, is as unquestionable as its exercise, in this case, is necessary. It is important for the credit of the House, and the credit of the country, that we should examine with care the limits of our constitutional power, in order that this question of jurisdiction may be finally settled, and at rest now and for the future.

But before turning to this precise subject, permit me to say a word or two, rather by way of notice than of extended examination, of disapproval rather than reply, in answer to some general sentiments which have been started in the course of this debate. Much of the discussion has gone off in sallies on the freedom of speech, and the freedom of the press, and in disquisitions on the right of individuals to redress the wrongs of themselves and their friends, for the abuses of either. The whole spirit of the debate reveals as deep-seated a feeling in some portions of this country to elevate the self-remedy of personal redress into a higher law, as we know there is in others to call a higher law to their aid in opposing great constitutional enactments for the reclamation of fugitive slaves. Real liberty is in equal danger from both these excesses, wherever such mistaken notions of it exist, wherever such mad licentiousness prevails.

A *jeu d'esprit* of Dr. Franklin, in one of his lively anonymous essays, has been quoted as grave authority to prove that he was in favor of correcting the liberty of the press by a protective grant of *the liberty of the cudgel*. The passage has been paraded with the gravity of a *case in point*. Franklin prepared the article for a newspaper, called the Federal Gazette. He entitled it "An account of the Supremest Court of Judicature in Pennsylvania, viz: the Court of the Press." His subject, which the title so well describes, is distributed into various heads, such as the *Power of the Court*, its *Practice*, &c., until he comes to the *checks* where he laughingly discourses on the employment of the *cudgel*. In this part of his essay, he presents a plan, alike facetious and ingenious, for the restoration of what he describes as an ancient privilege. But before counseling such an extremity as the old-fashioned resort to a *drubbing*, he coolly advises, in the first place, to visit personality and defamation with a "*moderate*" punishment, such as "tarring, feathering, and tossing in a blanket." Have those innocent gentlemen, who see in this delightful juvenescence of an old man, the authority of the philosophic Franklin, ever heard of that delicate figure in rhetoric, called *irony*? The essay in question was never intended to be serious. It is only a capital specimen of ironical pleasantry and pungent satire.

Blackstone tells us that, by the common law of England, a husband could legally punish his wife by administering to her moderate correction. He pleasantly adds that, though this right had passed away, the lower classes of the people who always liked the old common law, showed their attachment to it by keeping up the old practice. Are the happy strokes of Addison in his sportive descriptions of Sir Roger de Coverley, of our own Irving in his playful excursions, of Shakspeare in his numerous characters, of Sidney

Smith in his witty veins, to be taken as types of their real opinions on the subjects they profess to treat? As well might Blackstone be cited in favor of whipping wives, as the sly humor of Franklin's article be quoted in vindication of the use of the cudgel. All readers know what opinions the political and philosophical writings of Franklin enforce. For grave legislators, for the supporters of law and order, his name is unchangeably identified with the opposite doctrine. He thought that the moral supremacy of law over physical violence, was one of the indispensable props of the whole fabric of social liberty. So far is it from the fact that this humorous essay furnishes an index of his real opinion, that the father of American printers, true to the dignity of his calling, can be quoted for the sentiment written in 1737—some fifty years before—that the true remedy for the falsehood and injustice of the press is to be found in those neutralizing and counteracting influences which are secured by its freedom. Experience has proved, in this country, that the *law* is an adequate safeguard from the effects of its wantonness, and a just avenger of its excesses. And history has shown, in England as well as here, that its own unshackled freedom is the best restraint upon its licentiousness, and the best disinfector of its poisonous exhalations.

It was once feared, sir, that the abuses of the press would at last prove the grave of its freedom. However bad men—as Milton says in speaking of such—

"*License* they mean, when they cry, liberty"—

may abuse it, the apprehension of such a consequence is now shared by few. The press, unlike those venomous reptiles which, we are told, sometimes sting themselves to death, is rather, in this respect, to be compared to our undying Constitution. Self-poised, self-sustaining, and preëminent, it possesses, like the press, within itself, the means of rectifying its own evils, without bringing with the correction the concomitant and greater ill of self-abandonment or revolutionary change.

An argument must be hard pressed for authority to sustain it, which will deliberately summon to its aid such an effusion, or quote the sentiment of Sismondi for the continuance of the practice of dueling. The historian of Southern Europe would doubtless recognize the conventional rules of the duello for the decision of personal disputes, as an important step in the march of civilization, from those rude ages in which sudden and vindictive passions decided the contest. But the same thing may be said of many other improvements on past times. They are not merely unnecessary now, but their adoption or continuance would carry us back to the barbarous ages which they characterized, and of which they formed a part. As civilization advances, the cudgel and the duel give place to those moral appliances which distinguish a higher civilization, a more advanced stage of society. A people must lose in the race of refinement, or betray the absence of it, in proportion as they adopt or try to perpetuate the usages of semi-barbarous times. The half-cut and meager civilization of which Sismondi wrote, is no more applicable to our own times and country than is the resurrection of dead and buried *chivalry* in the person of a Don Quixote, to redress the wrongs of injured innocence. Equally good reasons, drawn from historical analogies, can be given in favor of whipping a wife for misconduct as for continuing the duello, or using a cudgel in debate. But I dismiss the topic.

The grave circumstances attending the transaction before the House, the number of similar occurrences which recent times have produced, and the sad consequences to the national character which they entail, require a full consideration of the jurisdiction of Congress over acts of violence on the part of its members.

If instances have indeed happened, such as we have heard recounted on this floor—I will not say with levity, but certainly without disapproval—worthy rather of the cock-pit and the ring, than an assembly of gentlemen invested with legislative power—I think the feeling of the country would be rather in favor of covering up such disgraces than revealing them, for our own shame and the condemnation of mankind. If they have been sometimes winked at, it is high time to apply a corrective, lest continued impunity should tend to their continued recurrence. I come, therefore, to the immediate subject in hand.

Sir, I cannot subscribe to the doctrine of the minority report, so plausibly and ably defended by its author, the honorable gentleman from Georgia, [Mr. Cobb.] The attention I have given to this subject satisfies me that the principles of the report are dangerous and wrong. It repudiates altogether the authority of English precedents, and traces, while it confines, all the power of either House over, and in defense of, its own members, to those few words of the Constitution in the second clause of the fifth section of the first article, which speak of *disorderly behavior*. It does not stop here. In construing this clause, it restricts the jurisdiction of the two branches of Congress to such acts of disorder as may be committed in the presence of either body, in contravention of its written rules. It gives to neither House over its members any greater power—any further latitude than this. Sir, I propose to show that the disciplinary power of the House is more ample than this.

That British precedents are tinged with the omnipotent power of Parliament, and are imbued with the principle of aristocratic privilege, I am willing to admit. That they transcend in refinement and punctilio the requisitions of a republican, and the powers of a limited legislature, I am also willing to concede. But the argument of the report involves the absurdity, that because parliamentary precedents, in England, go further on the subject of privilege than the Constitution authorizes, or the genius of our own institutions allows, *therefore* Congress is powerless in its own self-vindication from the effects of any act, however monstrous, which a member could commit, unless it be done in open session. This reasoning would make the Congress of the United States as incongruous in its general structure, as it would be pitiably helpless in its functional

vitality. While embracing, in the apparent scope of its external powers, all that would confer national dignity and renown, is it so impotent as to be without the sanctions of a necessary, self-protecting, internal police? Some belligerent partisans in the two Houses might, in times of high excitement, be guilty of the disorder of presenting themselves, in battle array, against each other; and yet, because that disorder was not committed while the two Houses were assembled, or in the presence of either, no purgation of the unworthy members could ensue, no restraint upon unbridled passion could be interposed, no punishment to efface the public stain could be inflicted. Is this in accordance with the parliamentary history of the national Legislature, or with the plain reading of the Constitution itself?

Happily for the political frame-work of our Government, this notion of individual immunity from all parliamentary law receives no countenance either from a fair interpretation of the written instrument, or from those principles of self-preservation which are inherent in all legislative assemblies. Such a system would be liable to two very grave objections—the imbecility to which it would reduce the law-making power, and the license to which, by reason of that imbecility, the members would be invited.

That rule of construction which is applied to the Constitution in questions between the conferred powers of the General Government and the reserved rights of the States, would, in its application to the disciplinary functions of the Legislature itself, paralyze both branches of Congress in its control over the personal conduct of members. A different rule is essential to the respectability, the honor, and the dignity of its admitted powers. Public confidence would be gone, if a stranger who endeavored to bribe a member could not be punished by the body to whom the insult was offered, and public respect would be lost if the body could not be purged of a member, who had accepted a bribe. Full of mischief and danger as this doctrine is, it is the doctrine of this minority report. My reading of the Constitution and the practice of Congress are totally at variance with the soundness of such a conclusion.

Permit me to refer to some of the cases in elucidation of the legislative practice. In the case of Anderson *vs.* Dunn, reported in 6 Wheaton's Reports, (decided in 1821,) the Supreme Court of the United States decided that this House has the right to punish a stranger who attempts to corrupt it by offering a bribe to one of its members. The principle of Anderson *vs.* Dunn had been recognized in the practice of this House long before the decision of the Supreme Court. In the year 1796, Mr. Madison reported, in the case of General Gunn, a Senator, that he was guilty of a breach of privilege, by challenging a member for a cause relating to the exercise of an act of representative discretion. The cases in the House of Randall and Whitney, which were nearly cotemporaneous with the case of Gunn, and that of Mr. Duane, in the Senate, in the year 1800, were in exact coincidence with those which preceded and followed.

More recently (in the year 1828) a writer for a newspaper was punished for assaulting the Private Secretary of the President, while on his way from one House to the other, in charge of an executive message. So recently as the year 1832, General Houston, who was not a member, was voted to be guilty of violating the privileges of the House, by assaulting Mr. Stansbery for language uttered in debate. These are all instances of persons who had offended against the privileges of members; and yet, forsooth, according to the principles of this report, no privilege whatever exists, except exemption from arrest in civil proceedings, and from legal responsibility for a harmless speech—now, in either of the above-mentioned cases, if the offender had been a member, would not the delinquency be increased? If Anderson, who offered a bribe, had been himself of the body he sought to contaminate—if General Gunn, Mr. Jarvis, and General Houston, had all been members—would not the offense of sending a challenge in one case, of waylaying the President's secretary in another, and of beating the debater in the instance last named, have magnified and aggravated the charge? The answer is indisputable. But, as if no branch of the subject should want exemplification and proof, this reasoning is confirmed and elucidated by a striking precedent in the action of the Senate against William Blount, a member of their own body, so early as the year 1797. Blount was found guilty of tampering with an Indian interpreter, and of attempting to excite distrust or hostility among certain Indian tribes towards the officers of the United States. He was expelled from the body he disgraced, by nearly a unanimous vote, one Senator only voting in the negative.

Here, then, is presented an unbroken chain of precedents in favor of the power now asserted, almost from the foundation of the present Government. But it is contended that an exception occurs—that of Mr. Marshall, a Senator from Kentucky, who, though accused in 1796 of an infamous crime, was not expelled for want of jurisdiction. It could not have escaped the sagacity of the honorable gentleman from Georgia, who cited Mr. Marshall's case as one of a negative character on this question, that it cannot be introduced as an authority on either side. Perjury, which is a false oath taken before a judicial tribunal, and therefore specially concerns judicial proceedings, can only be established after a searching investigation in a court of law. The suit in which the alleged perjury was committed, was tried eighteen months before Mr. Marshall's election to the Senate of the United States, and the charge which was publicly made, was publicly answered before his election. The committee of the Senate, therefore, reported that it was improper to act in such a case.

The charge was intended as a reproach, and was obviously the offspring of private malice. The staleness of the accusation, and the absence of all evidence to support it, are conspicuously adverted to in the report. The committee say:

"If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memo-

rialists *why he has not long since been tried in the State and district where he committed the offense.* Until he is *legally convicted*, the principles of the Constitution and of the common law concur in presuming that he is innocent."

The decision of the Senate in dismissing the complaint against Mr. Marshall was in pursuance of the English parliamentary rule, which requires that, in cases of felonies and other infamous crimes charged against members, "*they be adjudged to remain of the House* until after conviction."

The same rule was adopted by this House when the member from California, whose case is at this moment under trial before a criminal court, was indicted for the crime of homicide. I concurred in the vote which refused to appoint a committee of investigation at that juncture, because a report upon it here was likely to interfere with that fair, unprejudiced, and impartial trial to which the accused was entitled.

The case of John Smith must also be regarded, for another reason, as *sui generis*, and as not coming within the line of authorities for or against the rule. Like the preceding examples, it will be found, upon examination, to be only apparently and not really exceptional. In the year 1808, Smith, who was a Senator from Ohio, was accused of participating with the famous Aaron Burr, in his alleged treasonable designs against the authorities of the United States. Party spirit and public clamor ran high against the unfortunate, perhaps criminal Burr. To what extent the principal and his accomplices are to be deemed guilty of meditated treason, is a historical question, more easily pronounced upon, than solved. Certain it is, a large majority of the Senate denounced Smith as a conspirator, and voted his expulsion; but failing to obtain the requisite majority of two thirds, by a single vote, the resolution was practically defeated. After this decision of his peers, Smith retired from public life, though he never formally resigned his seat in the Senate.

Upon this case, Judge Story, in his Commentaries, pointedly remarks: "The failure of the motion to expel did not arise from any doubt on the part of the Senate of their power to punish misdemeanors not done in the presence or view of the body." These two cases, though anomalous, it may be confessed, form no exception to the unvarying uniformity of practice which has prevailed from the earliest period, in both branches of Congress, where the question fairly arose.

Other precedents might be cited from the history of the two Houses. The propriety of all is sustained, not merely by the ruling of the Supreme Court in Anderson and Dunn, but sanctioned, I believe, by all the elementary writers on constitutional law. Mr. Rawle, in his "View of the Constitution," calls the right here asserted an "implied power of punishing for contempts and infringements of the privileges of the two Houses," and declares that "it is correctly deduced from the Constitution." Kent, whose admirable work on American law has almost of itself the force of authority on many branches of the subject it discusses, emphatically approves of the decision of Anderson and Dunn. Judge Story not only does the same thing, but signalizes several of the precedents here cited as worthy of special approval. So far, therefore, as authorities go, whether we regard the practice of the House, the decision of the Supreme Court, or the sentiments of legal writers, the principle contended for is abundantly established.

Touching the case now under consideration, it is that of an assault committed by a member of this House on a member of the Senate, for *words spoken in debate*. It comes within the principle of the cases cited. The offense was occasioned by that legislative act, for which no member of either House can even be "*questioned*" in any other place, and the injury was committed upon the person of the Senator who performed the act. The Senate of the United States, to which body the aggrieved member belongs, is a coördinate branch with us of the National Legislature, and represents in the councils of the nation the dignity and rights of the States as political communities. This august assembly, as a constituent part of the law-making power of the Federal Government, has made complaint of the assault to this House, its fellow-constituent. The question is, have we the power to redress the injury of which that body complains, by punishing the assailant?

The Constitution, in giving to each House the right to punish its members for "disorderly behavior," wiselyleaves that offense without the restrictive definition which is now applied to it. In like manner, it submits the nature of the punishment to the sound discretion of the respective Houses, when short of expulsion. What acts do and what acts do not amount to *disorderly behavior*, the Constitution has not defined. It is the special and enlightened province of the two Houses of Congress to decide that question as often as it may arise. The Senate regards the act as *disorderly behavior*, within the meaning of the Constitution, and as such has made it a *subject of complaint*.

But it is argued from the position of the words "*disorderly behavior*" in the Constitution, that they mean simply, *disorder in the violation of the rules*. In order to justify such an interpretation, it is plain that the language of the text must be added to, or interlined. Without gloss or interpolation the passage is thus written in the Constitution:

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member."

The sentence is clearly divisible into three branches; one relates to the right of *making rules*, a second, the independent right of *punishing members*, and the third clause requires a majority of two thirds, if the punishment proceeds to the extremity of expulsion. How can the second clause be referred to or limited by the first without adscititious words? If the true reading be, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior *who violate these rules*," it may be asked why did not the clear-sighted framers of the instrument so express their meaning, by other or supplemental expressions?

The common and the cultivated eye of the country has read the sentence differently for more

than sixty years. Congress has never given it the construction now contended for, as no rule has ever been made for the punishment of disorderly behavior. The words are too plain, the grammatical independence of the different clauses is too clear, for the uncertainty of doubt or the ambiguity of cavil. Congress, whose practice has been consentaneous with the decision of the Supreme Court and the opinions of professional writers, has given to each part of the sentence its due force and a literal construction. If any principle in public affairs is ever to be considered as settled; if the ebb and flow of opinion are not always to fluctuate with the ceaseless billows of party strife; if the maxim, *stare decisis*, is ever to be admitted as sound in doctrine in these Halls of legislation, surely the constitutional power of this House to punish its members for disorderly behavior should be regarded as finally established.

It is for this House to say whether it will consistently maintain its ground, as a fixed principle, on this subject, or abandon it to the ruling spirit of the hour—to the ever-shifting sands of political accident and party necessity. It is for this House now, in the early days of its existence, to declare whether it will voluntarily so limit its jurisdiction, so cripple its own powers, and so lessen the means of its own purity, usefulness, and honor, as to deny itself the right of acting in the case before it. Will it furnish, as a precedent, a safe and flexible rule for the future, or a narrow and immalleable description of its faculties, alike inconsistent with its high attributes of power, as it would be subversive of the character of a dignified national assembly? Will it pronounce, by its decision in this instance, that *disorderly behavior* can only be committed in the face of the House, and while in the transaction of its business? Would it not be a more prudent and conservative rule—one more congenial with other parts of the Constitution as well as its general frame—one more suitable to the dignity of Congres, and the honor of the nation—to declare, as an abiding and permanent rule, that *misconduct* may be committed in or out of the House, if done during the session? The exemption of members from civil arrest is, by the terms of the Constitution, coextensive with the session, and the time is even prolonged to going from and returning to the respective Houses. That the whole period of a session forms the only safe limit to our jurisdiction over acts of disorderly behavior, is evident from the continuing nature of a legislative body. In contemplation of law, the session of the two Houses of Congress is uninterrupted by recess or separate adjournment, until its final action is terminated by the concurring action of both. In England, the whole session of a Parliament is considered as but one day, and is, therefore, continuous from the beginning to its close. (See, as to this, Lex. Parl., C. 2; 1 Inst., 7, 27, 28; 1 Blacks., 186; Bro. Abv. Parliament., 86.) As, therefore, the Senator was engaged in his seat in the Senate Chamber, upon a temporary adjournment of the sitting, when he received the assault, I conceive that our jurisdiction is as complete as our path of duty is clear.

In arriving at this conclusion, I disclaim being the champion of any party or sectional issue. If the assailant were any northern member, or one of my own colleagues from Pennsylvania, I should, in either case, unhesitatingly vote as a sense of public duty will compel me to vote on this occasion. While I deliberately entertain the opinions of a northern man on the subject of African slavery, I hold no sympathy with the extreme and latitudinarian opinions of the assaulted Senator, and I emphatically condemn the personalities of his speech, no less, but certainly no more, than those other and previous personalities which provoked them. But, however we may all regret and disapprove, as I certainly do, of the spirit and tone of that Senator's language, I fail to perceive in it the least justification or excuse for blows.

It is alleged, in extenuation of this resort to violence, that the Senator from Massachusetts not merely delivered a speech in the Senate which, full of personal invective, was deliberately written out and printed before its delivery, but that copies were multiplied and circulated by himself. It is further asserted that he attacked the revolutionary fame of South Carolina, and the character for veracity of an absent and venerable Senator, who was a near kinsman of the offender before us. On the other side it is replied that Massachusetts, her history, her legislation, and her Senator, had all been the subjects of previous and repeated attacks. But suppose it were otherwise, does the attack on South Carolina and an absent kinsman justify or excuse personal violence in the Senate Chamber? The member of this House, if he had calmly reflected, would have seen that disparagement and invective, under such circumstances, whether historical or personal, would inevitably recoil upon a speaker who could so far forget the dignity of the place and the proprieties of the occasion as to indulge in both. The fame of South Carolina and the repute of her absent Senator required no avenger. The offensive parts of the speech delivered by the Senator from Massachusetts were exposed and replied to; among others, by the eminent Senator from Michigan, his personal friend, in the most cutting terms of reproof, before the sitting was closed on which the speech was ended.

But the resentment of the assailing member was not to be appeased either by the fact that the attack was provoked, or that its "*unpatriotic and un-American*" character had been reprehended and exposed. Nor was it to be by any token of mere indignity and disgrace. It sought the infliction, not merely of an ignominious, but a sanguinary punishment, by a succession of violent blows with a cane over the most vital and unprotected part of the Senator's person, without any apparent regard to the serious, if not fatal, results which might ensue.

Members of Congress are assembled here as law-makers. When they forget the high trust with which they are invested, and become not merely breakers of law, but commit breaches of the peace, they exemplify, not civilized, but savage liberty, *libertas quidlibet faciendi;* they act in practical subservience to a *higher law* than the legal Government of the land; or they may properly

be said to be in subjection to *brute force*, which is an instinct of the *lowest law* of our nature. Nothing but the absolute dominion of law, however restrictive and distasteful, can preserve the liberties we boast, since the first lesson of high civilization and enlightened freedom is that which teaches implicit and unquestioning obedience to its mandates — that first lesson of which northern resisters of fugitive slave laws, southern pugilists, and sympathizing fillibusters, have much to learn.

It is intimated in the minority report, and the argument has been repeated on this floor, that the injury complained of could be well redressed, without any intervention of Congress, by the ordinary judicatures of the country. Is such a suggestion well founded? Does a *pecuniary* penalty give this adequate redress? Can *we* pass this by as only an aggravated assault, perpetrated by one private person on another? It is impossible so to regard it. Consequences have followed which no sentence or verdict of an ordinary court can repair. Massachusetts has been deprived for weeks of the votes and services of her Senator by a violent assault upon his person. Can a civil court recompense her for the loss of her representative, in the shape of damages for his sufferings? Will the fine of three hundred dollars, which has been imposed by the criminal court of this city, soothe her sensibilities, wounded through his degradation, or avenge the indignity of such an affront offered to Congress and the country?

I regard every blow which was struck at the Senator as a blow dealt upon the honor of this nation—as a blow aimed at the dignity of the honored Commonwealth of Massachusetts—as a blow inflicted on the Senate of the United States, and as a blow deeply affecting the reputation of this House. I shall, therefore, vote in favor of the first resolution reported by the majority of the committee; and, with a view to this, I shall ask, at the proper time, for a division of the question on the two resolutions.